

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

Ana R. Olivella Rivera

Plaintiff

vs.

District Court No.

**Popular Leasing and Rental, Inc
and others**

3:98 cv-2267 JAG-GAG

Defendants

REPLY TO PLAINTIFF'S MOTION REQUESTING SANCTIONS

TO THE HONORABLE COURT:

Comes now defendants **Popular Auto, Inc** (formerly Popular Leasing & Rental, Inc.) and respectfully shows and prays:

1. Although the unfounded motions filed by plaintiff (Docket No. 138 and 143) were denied as to Popular Auto, Inc. by order of 12/23/05 Docket No. 145, in compliance with the order issued on the same date (Docket No.142), we wish to explain our position.
2. Absence from the pre-trial conference- The pre-trial conference was originally set for October 26, 2005. Plaintiff attorney requested a continuance for that hearing. After much coordination and calls to Mr Oliveras López de Victoria, who twice postponed the meeting, Mrs. Ana María Otero, and the undersigned appeared at Mr. Oliveras offices in Caguas to prepare the Proposed Pre-Trial Order.
3. Mr. Oliveras López de Victoria was supposed to email us a compiled and final pre trial order, but as always, failed to notify us a copy.

4. We failed to appear at the Pre-Trial hearing because of a mistake and misunderstanding. The undersigned had to appear in a case in Ponce on November 29, 2005 and brother counsel José R. Díaz Ríos had to appear on before Judge Georgina Candal Segurola in a case that the he was sued personally as executor of an estate. Since Mr. Díaz assigned me to go to Ponce, I thought that Mr. Díaz could appear at the conference. However the secretary in charge of calendar was sick during the month of November, 2005 and failed to make an entry in Mr. Díaz's calendar for November 29.
5. Although we did not appear at the conference, the interest of Popular Auto were protected by the appearance of Mrs. Ana María Otero, who represents Banco Popular, parent company of Popular Auto. She is also the attorney of Preferred Insurance Co., the same insurance company that covers the claims against Popular Auto in this case.
6. We present sincere apologies to the court for our mistake. This is the first time since we have appeared in this case, that we had failed to comply with anything. This case has been before this court since 1998. We have always be on time and had prosecuted this case diligently. We certainly cannot say the same about the conduct of Plaintiff attorney whose tardiness, always not complying with orders and foot dragging cost him a dismissal of this case. Mr. Oliveras should show the same fast and diligent disposition displayed to request sanctions, when prosecuting his case.
7. Since we failed to appear to the hearing we were not aware that any order was issued against Popular Auto. The first emails received on my address from the court in this case were mailed on December 23, 2005. We saw the emails on January 3, but could not react to Plaintiffs motions because they were not notified to us. See our letter to Mr. Oliveras López de

Victoria dated January 4, 2006.

8. WE INFORM THIS COURT THAT PLAINTIFF'S ATTORNEY HAS NOT NOTIFIED US WITH ANY OF HIS MOTIONS FILED DURING THE YEAR 2005. Mr. Oliveras has our email address, telephone and fax numbers.
9. We are really bothered and incensed because this attitude and flagrant violation of both, Court and common courtesy rules. We had previously complained with Mr Oliveras for his failure to notify motions yet he denies it or alleges he has an old address. We request the Mr Oliveras be ordered to notify his motions to us by certified mail and by e mail.
10. We could not comply with the order to show cause because this order was not notified to us within the time frame established by the order; yet Plaintiff attorney jumps and request elimination of defense pleadings, on our first offense and knowing that he did not notify us with copy of his motion.
11. In relation with the deposition of Sylvia Carmona, we informed Mr. Oliveras that we did not have any copy of said deposition. It is true that the deposition was taken in our office, but Mr Oliveras made his own arrangements with the reporter. If the transcript is now unavailable it is the fault of plaintiff.

WHEREFORE, Defendants respectfully request that Honorable Court takes notice as to the reasons of our absence. We also request that the Court instruct Mr Oliveras López de Victoria to notify all future motions to us by certified mail and by email.

I HEREBY CERTIFY: that on this same date, a copy of this document was sent to brother counsel **Rafael A. Oliveras López de Victoria, Esq.**, Avenida Ponce de León 452, San Juan, Puerto Rico, Puerto Rico 00918; to **Ana María Otero, Esq.** Box 902393, San Juan, Puerto Rico 00902-3933; and to **Dagmar Adorno, Esq.** Box

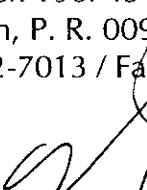
USDC Civil No. 98-2267 JAG

Page 4

70244, San Juan, Puerto Rico 009368244

In San Juan, Puerto Rico, January 9, 2006.

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